STATE OF MICHIGAN

COURT OF APPEALS

ELAINE DENOYER and MARK DENOYER, Plaintiffs-Appellants,	UNPUBLISHED August 15, 2000
v	No. 218963 Washtenaw Circuit Court
CURTIS FREEDMAN and ROSLYN VERDUN, Defendants-Appellees.	LC No. 97-003885-NO

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for a directed verdict. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Elaine Denoyer, a mail carrier for the United States Postal Service, sustained injuries when she slipped and fell on defendants' porch while delivering mail to the residence. A winter storm was in progress at the time the accident occurred. The steps leading to the residence were covered with ice and snow, and the porch, which was protected by an overhang, was wet.

Plaintiffs filed suit, alleging that defendants failed to maintain their property in a reasonably safe condition. The trial court denied defendants' motion for summary disposition; however, it ruled that defendants had no duty to alleviate any unsafe condition created by the storm while the storm was in progress.

The case was tried to a jury. At the conclusion of plaintiffs' proofs defendants moved for a directed verdict. The trial court granted the motion, holding that because the wet condition of the porch was open and obvious, defendants owed no duty to plaintiffs.

When deciding a motion for a directed verdict, the trial court must view the evidence and all reasonable inferences from the testimony in a light most favorable to the nonmoving party to determine whether a prima facie case was established. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994). If the evidence could lead reasonable jurors to disagree, the trial court should not substitute its judgment for that of the jury. *Lamson v Martin (After Remand)*, 216 Mich App 452,

455; 549 NW2d 878 (1996). We review the grant or denial of a motion for a directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). The open and obvious danger doctrine attacks the duty element. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 612; 537 NW2d 185 (1995). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

Plaintiffs argue that the trial court erred by granting defendants' motion for a directed verdict. We disagree and affirm. Plaintiffs' reliance on *Altairi v Alhaj*, 235 Mich App 626; 599 NW2d 537 (1999), for the proposition that the open and obvious danger doctrine has no application to an injury that occurs on private property, is misplaced. In *Altairi*, *supra*, another panel of this Court held that the natural accumulation doctrine, which protects a private property owner from liability stemming from the natural accumulation of snow and ice on public sidewalks that abut the private property, does not eliminate a property owner's duty to a licensee on the property. To be held liable for damages resulting from a danger on the property, the property owner must know of the danger, or have reason to know of it. However, the danger cannot be open and obvious. *Id*., 637-640.

The open and obvious danger doctrine applies under facts such as those presented by this case. The undisputed evidence established that Elaine Denoyer was fully aware of the winter storm conditions. As she approached defendants' residence, she observed that the steps were covered with ice and snow, and that the porch was wet. Nothing on the record indicates that an average person with ordinary intelligence would not have noticed the dangerous condition of the porch upon casual inspection. *Novotney*, *supra*. The trial court properly granted defendants' motion for a directed verdict on the ground that reasonable jurors could not disagree regarding the open and obvious nature of the condition. *Lamson*, *supra*.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot